

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CPM DEVELOPMENT CORPORATION,
d/b/a CENTRAL PREMIX CONCRETE
CO.,

Plaintiff,

v.

CITY OF PASCO, a Washington
municipal corporation, acting
through its Planning Commission
and City Council,

Defendant.

No. CV-07-5009-FVS

ORDER REMANDING ACTION

THIS MATTER came before the Court in light of Plaintiff's recently filed amended complaint. Plaintiff is represented by Dennis Dean Reynolds. Defendant is represented by Kenneth W. Harper.

BACKGROUND

This is an action for money damages arising out of certain land use decisions by the City of Pasco. (Ct. Rec. 1). Plaintiff originally filed suit in Franklin County Superior Court on February 13, 2007. Defendant removed the action to this Court on March 2, 2007, based upon the existence of federal question jurisdiction. On April 16, 2007, Plaintiff filed a second cause of action in Franklin County Superior Court. On April 22, 2007, Defendant also removed the second cause of action. That matter was subsequently closed and the parties joined in the instant action. (Ct. Rec. 6).

1 The parties represented that Plaintiff had appealed the land use
2 decision at issue in this matter to the Franklin County Superior Court
3 under Washington's Land Use Petition Act ("LUPA"). On May 11, 2007,
4 based on the parties' request, the matter was stayed pending
5 resolution of the LUPA appeal in Franklin County Superior Court. The
6 matter was stayed until March 3, 2008. A final judgment and order was
7 entered in the LUPA appeal on June 6, 2008. Plaintiff thereafter
8 filed an Amended Complaint in the instant action.

9 As noted by Plaintiff, the Amended Complaint drops the only
10 federal cause of action from this law suit, allegations under 42
11 U.S.C. § 1981, et seq.

12 **DISCUSSION**

13 The Court had original jurisdiction over Plaintiff's federal law
14 claim at the time of removal based on the existence of a federal
15 question. 28 U.S.C. §§ 1331; 1441(b). The Court was authorized to
16 exercise supplemental jurisdiction over Plaintiff's state law claims
17 because the state law claims were related to their federal law claim
18 in such a manner that the state law claims formed part of the same
19 case or controversy. 28 U.S.C. § 1367(a).

20 Pursuant to Federal Rule of Civil Procedure 15(a), Plaintiff was
21 entitled to amend its complaint as a matter of course because
22 Defendant has not served an answer in this matter. Plaintiff's
23 decision to abandon the federal law claim does not constitute forum
24 manipulation. See *Baddie v. Berkley Farms, Inc.*, 64 F.3d 487, 491
25 (9th Cir. 1995) (Plaintiffs "dismissed their federal claims and moved
26 for remand with all due speed after removal. There was nothing

1 manipulative about that straight-forward tactical decision[.]").

2 Thus, at this juncture, the only claims before the Court are state law
3 claims.

4 This development does not deprive the Court of jurisdiction. See
5 *Sparta Surgical Corp. v. Nat'l Ass'n of Securities Dealers*, 159 F.3d.
6 1209, 1213 (9th Cir. 1998) (the existence of subject matter
7 jurisdiction is evaluated in light of the pleadings that are filed at
8 the time of removal). Nevertheless, given the absence of any claim
9 over which the Court had original jurisdiction, the Court must decide
10 whether it should continue to exercise supplemental jurisdiction over
11 Plaintiff's state law claims. 28 U.S.C. § 1367(c)(3). "[I]n the
12 usual case in which federal-law claims are eliminated before trial,
13 the balance of factors . . . will point toward declining to exercise
14 jurisdiction over the remaining state law-claims.'" *Carnegie-Mellon*
15 *Univ. v. Cohill*, 484 U.S. 343, 350 n.7, 108 S.Ct. 614, 619 n.7, 98
16 L.Ed.2d 720 (1988). However, the Court may not decline supplemental
17 jurisdiction without determining whether remand is consistent with
18 considerations of economy, convenience, fairness, and comity. See
19 *Executive Software North America, Inc. v. U.S. Dist. Court*, 24 F.3d
20 1545, 1557 (9th Cir. 1994).

21 Insofar as economy is concerned, the Court has not held a
22 scheduling conference or entered a scheduling order in this matter.
23 While this case has been pending since early 2007, it has been stayed
24 almost the entire time, and Defendant has yet to file an answer or
25 otherwise challenge the merits of Plaintiff's claims. Insofar as
26 convenience is concerned, both the federal district court and the

1 state superior court are located within the same geographic region.
2 Insofar as fairness is concerned, it appears that Plaintiff has
3 relinquished its federal law claim in order to return to state court.
4 Insofar as comity is concerned, remanding Plaintiff's state law claims
5 will avoid unnecessary federal entanglement in issues of state law.

6 Given the preceding circumstances, there appears to be no reason
7 to retain supplemental jurisdiction over Plaintiff's state law claims.
8 Accordingly, **IT IS HEREBY ORDERED:**

9 This matter is **REMANDED** to **Franklin County Superior Court** in
10 order to address Plaintiff's remaining state law claims alleged in its
11 amended complaint filed August 6, 2008 (Ct. Rec. 16).

12 The District Court Executive is directed to mail a certified copy
13 of this remand order to the clerk of the Franklin County Superior
14 Court. 28 U.S.C. § 1447(c). The District Court Executive shall
15 additionally enter this order, furnish copies to counsel and **close the**
16 **file.**

17 **IT IS SO ORDERED.**

18 **DATED** this 25th day of August, 2008.

19 S/Fred Van Sickle
20 Fred Van Sickle
21 Senior United States District Judge
22
23
24
25
26